

CITY OF SAN JOSÉ, CALIFORNIA  
Redevelopment Agency of the City of San Jose  
50 W. San Fernando Street, Suite 1100  
San José, California 95110

## STAFF REPORT

Hearing Date/Agenda Number  
PC Agenda: 1-14-04      Item: 3.

File Number  
RCP03-031

Application Type  
Conditional Use Permit

Council District  
3

Planning Area  
Downtown Core

Assessor's Parcel Number(s)  
259-35-013, 045

### PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 170 West Saint John Street

Gross Acreage: 0.08

Net Acreage: 0.08

Net Density: n/a

Existing Zoning: CG

Existing Use: Public eating and drinking establishment and entertainment establishment with after-midnight hours until 2:00 a.m. daily

Proposed Zoning: no change

Proposed Use: Public eating and drinking establishment and entertainment establishment with after-midnight hours until 2:00 a.m. daily (no change)

### GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation  
Core Area

Project Conformance: ☒ Yes    ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Parking Lot, Landmark Structure & Museum

CG (Commercial General)

East: Commercial Uses, Parking Lot

CG (Commercial General)

South: Parking Lot

CG (Commercial General)

West: Commercial Uses, Landmark Structure

CG (Commercial General)

### ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete April 27, 1999  
☐ Negative Declaration circulated on

☐ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: n/a

HISTORIC STATUS: Contributor to National Register District

Completed by: AG

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**PUBLIC AGENCY COMMENTS RECEIVED**

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Completed by: AG

Department of Public Works

None Received

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**Other Departments and Agencies**

Police Department – See Conditions of Approval and Attached Memo

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**GENERAL CORRESPONDENCE**

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None Received

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**ANALYSIS AND RECOMMENDATIONS**

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## **PROJECT DESCRIPTION**

The project site is located at 170 West Saint John Street. The site is developed with a two-story commercial building in the Commercial General (CG) Zoning District. The property owner is requesting a Conditional Use Permit (CUP) to allow continued operation of a public eating, public drinking and entertainment establishment, Blue Tattoo, with after-midnight hours. The Blue Tattoo is a full service restaurant with a bar and stage area for dancing operating under a valid CUP. The subject CUP will allow the use to operate for 5 more years.

All types of entertainment would be allowed under this CUP, for example comedy shows, live entertainment, dancing, and DJ's. As a part of the Police Department issued Entertainment Permit and this CUP, entertainment is only allowed if minors under the age of 21 are not in the facility.

The subject tenant space is located in the ground floor of the existing building with the second floor being used as offices. No exterior changes are being requested as a part of this CUP. The proposed hours of operation for the restaurant are 8:00 a.m. to 2:00 a.m. daily, with alcohol service and entertainment ceasing at 1:30AM. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any commercial zoning district, obtain a CUP in order to operate between the hours of 12:00 midnight and 6:00 a.m.

## **GENERAL PLAN CONFORMANCE**

The proposed drinking and entertainment establishment uses will bring activity to the Downtown Core consistent with the *Strategy 2000* plan.

## **ENVIRONMENTAL REVIEW**

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

## **ANALYSIS**

Through the subject CUP, the applicant proposes to operate a public eating and drinking establishment and an entertainment establishment, with after-midnight hours, between the hours of 8:00 a.m. and 2:00 a.m. daily. Entertainment and alcohol service will end at 1:30 a.m. Such uses are subject to the City Council's 24-hour Use Policy, Guidelines for Evaluation of Nightclubs and Bars and the City's Zoning Ordinance. The objective of these policies and ordinances is to ensure that late-night uses, particularly drinking and entertainment establishments, are compatible with surrounding land uses. A key provision of these policies is to ensure that uses operating after-midnight not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility within its surroundings.

### **Land Use Compatibility**

The subject property is surrounded by commercial uses in all directions. Each of the commercial tenants has been notified of the pending application and hearing. The Blue Tattoo is an eating, drinking and entertainment establishment. The proposed use, located in the Downtown Core, adjacent to other similar uses with similar hours of operation, is compatible with existing commercial land uses in the vicinity such as O'Flaherty's, Club Wild, and Tied House. Such late night uses are anticipated by the *Strategy 2000* plan.

### **Conformance with the City Council Hour Use Policy**

The City Council's 24 Hour Use Policies state that late night uses operating between 12:00 midnight and 6:00 a.m. must be compatible with surrounding uses and must be separated from residential uses. The project site is located in the downtown core adjacent to other late night uses. There are no residential units adjacent to the project site. Conditions of approval are added to the CUP to ensure adequate noise control and litter pick-up; thus, the project will comply with the City Council's 24 Hour Use Policies.

**Public Outreach**

Notice of the proposed project was circulated to properties within 300 feet of the subject property.

**CONCLUSION**

Based on the analysis above, Staff believes that the proposed restaurant, drinking and entertainment establishment with after midnight use is consistent with the requirements of the Zoning Ordinance, General Plan, and City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars. In addition, the conditions of approval (below) will help to ensure the project's operational compatibility within its surroundings

**FACTS**

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) to operate a public eating and drinking establishment, and an entertainment establishment, with after-midnight hours of operations, between the hours of 8:00 a.m. and 2:00 a.m. daily. Alcohol service and entertainment will cease at 1:30 a.m. daily.
2. The project site is approximately 0.08 acres and is located in the Commercial General (CG) Zoning District.
3. A Conditional Use Permit is required for the operation of a public eating and drinking establishment, an entertainment establishment and operation of such use between the hours of 12 midnight and 6 a.m. in the CG Zoning District.
4. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram and is subject to the *Strategy 2000* plan for the Downtown Core.
5. The Core Area designation provides that drinking and entertainment establishments may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
6. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.

9. The project is consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars.
10. The project does not include any exterior changes to the structure.
11. An Entertainment Permit issued by the Police Department is required per Title 6 of the San Jose Municipal Code.

## **RECOMMENDATION**

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) and Ground Floor Retail (DG) Zoning District in that the operation of a public eating and drinking establishment, and entertainment establishment between the hours of 12:00 midnight and 6:00 a.m. requires the approval of a Conditional Use Permit.
2. The project conforms to the with the San Jose 2020 General Plan in that it proposes the operation of an eating drinking and entertainment establishment after-midnight within the Downtown Core Area.
3. This project is consistent with the City Council Policies on 24-Hour Uses in that it proposes the operation of an eating, drinking and entertainment establishment with after midnight hours, in an area of downtown predominately developed with commercial land uses.
4. The project conforms to the California Environmental Quality Act in that is does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
5. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

## **FINDINGS**

Based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

- c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
  - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of the following conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.

2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Hours of Operation. The hours of operation for the eating establishment, drinking establishment and entertainment establishment will be limited to 8:00 a.m. to 2:00 a.m. daily.
4. Alcohol Service. Alcohol service shall end at 1:30 a.m. with patrons to leave by 2:00 a.m. daily.
5. Entertainment. All forms of entertainment shall end at 1:30 a.m. with patrons to leave by 2:00 a.m. daily.
6. Noise and Acoustics. Noise emission shall comply with the standards identified in the Noise Element of the General Plan.
7. Trash, Refuse, Garbage and Litter.
  - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
  - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, daily.
  - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
  - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
6. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
7. Signage. Signage is not a part of this CUP approval. Any news signage at the project site is subject to a Permit Adjustment.

the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350, of the San Jose Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use presently conducted creates a nuisance.
2. Revocation. The Permit does not constitute a deed or grant of an easement by the City and is revocable at any time.
3. Time Limit. This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with condition number four below. Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
4. Renewal. The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.